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Supreme Court of the United States

OCTOBER TERM, 1937.

No. 596

NEW YORK LIFE INSURANCE COMPANY,

vs.

JOHN G. RUHLIN, JENNIE B. RUHLIN, JOHN B. RUHLIN, *et al.*, Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Charles E. Hughes, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

John G. Ruhlin, Jennie B. Ruhlin, John B. Ruhlin, William R. Ruhlin and Jean L. Ruhlin, the above named petitioners, respectfully pray that a writ of certiorari issue to review the decree (R. 39) of the United States Circuit Court of Appeals for the Third Circuit entered on September 27, 1937, affirming the order (R. 19) of the United States District Court for the Western District of Pennsylvania, dated April 16, 1935, and made by Judge Schoonmaker, overruling petitioners' motion to dismiss the bill in equity instituted on February 14, 1935, in said District Court by respondent (R. 2), praying for the deletion and elimination of the disability and double indemnity provisions contained in five life insurance policies issued by respondent to John G. Ruhlin, one of the petitioners; and, pending the final disposition of said bill, that petitioners be enjoined from instituting any action, legal or equitable, against respondent, or from proceeding in any way whatsoever with any action which may have been instituted by petitioners, or any of them, prior to the filing of said bill or in any wise on account of said policies, including the action of assumpsit brought by petitioner John G. Ruhlin, hereinafter referred to as insured, against respondent at No. 353 January Term, 1935, in the Court of Common Pleas of Jefferson County, Pennsylvania, or from assigning or transferring any rights under said dis-

ability or double indemnity provisions or changing the beneficiaries thereof, and overruling, also, the motion to dissolve the temporary injunction granted in accordance with the prayers of said bill, and enjoining petitioners, pending final determination of said bill, according to the prayers of said bill.

Statement

Prior to February 14, 1935, John G. Ruhlin, the insured, brought an action at law against respondent in the Court of Common Pleas of Jefferson County, Pennsylvania, to recover certain monthly income payments, hereinafter referred to as disability payments, equal to $10 per $1,000 of the face of five policies of life insurance issued by respondent to the insured and under the terms of which respondent agreed to pay to insured said benefits upon receipt of due proof that the insured is totally and presumably permanently disabled before age 60, as defined under "Total and Permanent Disability" in said policies which were issued on the following dates:

No. 10,452,365,	December 1, 1928,	face amount	$10,000
No. 10,452,366,	December 1, 1928,	face amount	5,000
No. 11,165,728,	July 7, 1930,	face amount	4,000
No. 11,165,729,	July 7, 1930,	face amount	4,000
No. 11,165,730,	July 7, 1930,	face amount	4,000

(R. 2-4)

Each of the policies contained the following incontestable clause:

> "Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

On February 14, 1935 respondent caused said bill in equity to be filed reciting the institution of said action at law to recover said disability benefits, the issuance of said policies, that they had been obtained by means of false and fraudulent answers to questions contained in the applications for said policies and prayed for the reformation of said policies by eliminating and rescinding the disability and double indemnity provisions from said policies and for an injunction restraining the insured and the beneficiaries named therein, the other petitioners herein, from instituting any action on said policies including said action at law, pending at the time of the filing of the bill (R. 2).

Upon presentation of the bill the court issued a restraining order and granted a rule to show cause why a temporary injunction should not be granted (R. 12).

On March 2, 1935, petitioners filed motions to dismiss the bill of complaint and to dissolve the temporary injunction (R. 14).

On April 16, 1935, the court made an order overruling petitioners' motions to dismiss the bill and to dissolve the temporary injunction and enjoining petioners from instituting any actions against respondent and from proceeding with said action instituted in the state court and noted an exception to petitioners (R. 19).

On October 6, 1936, the Circuit Court of Appeals (consisting of Circuit Judges Davis and Thompson and District Judge Watson) filed an opinion affirming that part of the decree of the District Court which

refused to dismiss the bill insofar as it sought the cancellation of the disability benefit provisions, and vacated the order restraining petitioners from prosecuting the action brought in the state court (R. 25).

On September 27, 1937, the Circuit Court of Appeals (consisting of Circuit Judges Buffington, Davis and Thompson), after a reargument, rescinded the previous decree of the Circuit Court of Appeals and affirmed the decree of the District Court (R. 39).

The Questions Presented.

1. The policies involved in this suit contain the following clause:

> "Incontestability.—This Policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

The provisions and conditions relative to "Disability and Double Indemnity Benefits" in said policies provide they shall be payable upon receipt of proof, and, as relates to double indemnity, that the benefits shall be payable only if death resulted in a particular manner and not if it resulted from self destruction, etc., etc., and, as relates to disability benefits, that they shall be payable only if the insured is through injury or disease wholly prevented from performing any work etc. for remuneration or profit, and then only if such disability occurs before the insured reaches a certain age; that they shall not apply if the disability resulted from self inflicted injury or from military or naval service in time of war, or to the temporary or paid up insurance provided under "Surrender Values," etc., etc.; that due proof of the continuance of the disability may be demanded from time to time

but, under certain circumstances, not more than once a year. There is no mention in these "provisions or conditions" that the sums promised are not recoverable in case of false answers in the application or anything to indicate that they stand upon a different footing from the other obligations of the insurer in the policy in regard to defenses for alleged fraud in the procurement of the contract.

Is an intent clearly shown to except disability benefits from the incontestable clause where it merely provides that "except as to provisions and conditions relating to Disability and Double Indemnity Benefits," the policy shall be incontestable after two years from its date of issue?

2. If there is a diversity of opinion among courts which have considered the identical incontestable clause as to its meaning or effect is there not such uncertainty or doubt as to call for the application of the settled rule that the insured is entitled to the benefit of the resulting doubt?

CHARLES J. MARGIOTTI,

CHARLES H. SACHS,
Counsel for Petitioners.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

A.

This Court has ruled that in case of ambiguity in the provisions of a life insurance policy, that construction will be adopted which is most favorable to the assured because the language employed is that of the in-

surer; that it is consistent with both reason and justice that any fair doubt as to the meaning of its own words should be resolved against it. The policy as a whole, that is, the incontestable clause and the "provisions and conditions relating to disability and double indemnity benefits" are drawn in such fashion as to lead the average man to believe that what the company reserved the right to contest is whether a man who claims to be wholly and permanently disabled and unable to perform any work or engage in business is so disabled, or whether such disability commenced before he was of a certain age and not thereafter, or to raise other questions as to whether the insured or the beneficiary has qualified to receive these payments under the many provisions and conditions which hedge disability and double indemnity benefits, but not that distinctions are to be made between the death benefits and disability and double indemnity benefits, as regards the validity of the contract.

If the insurance company intended to take away the security of attack from claims of alleged false answers in the application in the one case and not in the other, it was very easy for them to draw the contract in such a way as to clearly specify this.

B.

The decision in this case by the Circuit Court of Appeals for the Third Circuit is in irreconcilable conflict with the decisions of the United States Circuit Court of Appeals for the Ninth Circuit in the cases of New York Life Insurance Company vs. Kaufman, 78 F. (2d) 398, (cert. den. 296 U. S. 626), Mutual Life Ins. Co. vs. Markowitz, 78 F. (2d) 396, (cert. den. 296 U. S. 625), and of the United States Circuit Court of

Appeals for the Fourth Circuit in the cases of New York Life Insurance Company vs. Truesdale, 79 F. (2d) 481, and Ness vs. Mutual Life Ins. Co., 70 F. (2d) 59. It is also in conflict with the decision of this Court in Stroehmann vs. Mutual Life Ins. Co., 300 U. S. 435, 81 L. Ed. 502.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the decree of the Circuit Court of Appeals for the Third Circuit, should be granted.

JOHN G. RUHLIN, JENNIE B. RUHLIN, JOHN B. RUHLIN, WILLIAM R. RUHLIN and JEAN L. RUHLIN,
By

CHARLES J. MARGIOTTI,

CHARLES H. SACHS,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION.

I.

OPINIONS BELOW.

The opinion of the District Court is not reported but is found at page 19 of the Record. The opinions of the Circuit Court of Appeals are not reported and are found at pages 25 and 39 of the Record.

II.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on September 27, 1937. (R. 43.) Jurisdiction

to issue the writ is found in the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229 section 1, (43 Stat. 938, 28 U. S. C. A. section 347, p. 359).

III.

Statement of the Case.

The principal facts are stated in the foregoing petition.

IV.

Specifications of Error.

1. The Circuit Court of Appeals erred in not reversing the order of the District Court, dated April 16, 1935. (R. 19.)

2. The Circuit Court of Appeals erred in affirming the decree of the District Court dated April 16, 1935. (R. 19.)

3. The Circuit Court of Appeals erred in holding that the expiration of the period reserved for contests in the incontestable clauses in the policies did not preclude the respondents from contesting the validity of the double indemnity and disability insurance contained therein on the ground of alleged fraud in the procurement thereof.

4. The Circuit Court of Appeals erred in not holding that after the expiration of the period reserved for contests in the incontestable clauses in the policies the respondent was precluded from contesting the validity of the double indemnity and disability insurance contained therein on the ground of alleged fraud in the procurement thereof.

V.

ARGUMENT.

In New York Life Ins. Co. vs. Kaufman, 78 F. (2d) 398, (C. C. A. 9th cert. denied 296 U. S. 626), the Court having before it an identical incontestable clause, so far as disability benefits are concerned, in a policy gotten up like the ones involved here, said: "The ordinary man reading the clause would believe the provisions referred to were those included in the word 'Policy' at the beginning of the clause and not to the provisions in the application which is not mentioned" (p. 404), and held that it precluded a contest of the disability insurance for fraud in its procurement after the expiration of the period reserved in the policy for contest.

This Court, in Stroehmann vs. Mutual Life Ins. Co., 300 U. S. 435, 81 Law Ed. 502, where a substantially similar incontestable clause was involved, held that no intent was shown to except disability benefits from the clause. The two clauses are as follows:

Stroehmann Case:

"Incontestability,—Except for non-payment of premiums and except for the restrictions and provisions applying to the Double Indemnity and Disability Benefits as provided in Sections 1 and 3 respectively, this Policy shall be incontestable after one year from its date of issue unless the Insured dies in such year, in which event it shall be incontestable after two years from its date of issue."

This case:

"Incontestability.—This policy shall be incontestable after two years from its date of issue except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits."

(In the Kaufman case, *supra*, the words "and Double Indemnity" were omitted. Otherwise, the clauses are identical.)

Before the Stroehmann case was decided by this Court, a similar incontestable clause was held to preclude and debar the insurance company in its action to have the policy rescinded from raising the issue of fraud in the procurement of the policy, in Ness vs. Mutual Life Insurance Company, 70 F. (2d) 59, (C. C. A. 4th Cir.). No application was made to this Court for a writ of certiorari. See also New York Life Ins. Co. vs. Truesdale, 79 F. (2d) 481 decided by the same circuit court.

In Mutual Life Insurance Co. of N. Y. vs. Markowitz, 78 F. (2d) 396, (C. C. A. 9th cert. denied 296 U. S. 626), the Court reached a similar conclusion on a clause which was identical with the one in the Ness case.

The California Supreme Court, in Coodley vs. New York Life Ins. Co., 70 Pac. (2d) 602, found the "great weight of authority supports the position of the respondent", the insured, and affirmed the judgment of the lower court denying the right of the insurer to contest the policy and rescind the disability portion thereof on account of alleged false answers in the application. The court, in its opinion, referred to Mutual Life Ins. Co. vs. Margolis, 11 Cal. App. 2d, 382, where it was held that there was no ambiguity in such a clause and that after the period of contestability had expired, the incontestable clause precludes any defense that the provisions in the policy for disability benefits were procured by fraud and precludes a contest of the policy on any grounds which are not specifically excepted in the clause itself.

In Thompson vs. New York Life Ins. Co., 9 F. Supp. 248, the Court considered the question whether the ex-

ception had reference to the disability insurance, as a whole, or only to those group provisions relating to it under a subhead entitled "Disability Benefits", and resolved the ambiguity in the insured's favor.

The language of the clause, "except for non-payment of premium and except as to provisions and conditions relating to Disability and Double Indemnity Benefits", suggests the prospective and induces the belief that the subject matter of the defenses that may be asserted after the two year period refers to future occurrences and not the past.

CONCLUSION.

We submit the foregoing sufficiently shows the conflict between the circuit courts which have passed upon the question here involved and the probable error in the ruling of the court below.

Respectfully submitted,

CHARLES J. MARGIOTTI,

CHARLES H. SACHS,
Counsel for Petitioners.